

ATTACHMENT 12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,)
)
Plaintiff,)
) Case No.
vs.) 5:14-cv-05344-BLF (PSG)
)
ARISTA NETWORKS, INC.,)
)
Defendant.)
)
_____)

*** HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY ***

VIDEOTAPED DEPOSITION OF CISCO'S 30(b)(6) WITNESS
FRANK PALUMBO
San Francisco, California
Tuesday, June 7, 2016
Volume I

Reported by:
CARLA SOARES
CSR No. 5908
Job No. 2326739
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Page 1

1 BY MR. FERRALL:

2 Q Okay.

3 A -- I guess to prepare, but I didn't look
4 at any other documents.

5 Q And that document, was that one that you
6 helped prepare?

7 A Helped. It was prepared by the Cisco
8 sales teams and some of our internal sales tracking
9 mechanisms.

10 Q When was that document prepared?

11 A I believe we -- some of the data had been
12 gathered previously, and we summarized some of it
13 yesterday.

14 MR. FERRALL: Is that the document that
15 was just produced this morning, Counsel?

16 MS. CANDIDO: Yes.

17 MR. FERRALL: Can I ask -- maybe this
18 question is better posed to you, Ms. Candido -- that
19 document is marked "Highly Confidential, Attorneys'
20 Eyes Only." Is that Cisco confidential information?

21 MS. CANDIDO: Correct.

22 MR. FERRALL: Okay. So I can share it
23 with Mr. Palumbo?

24 MS. CANDIDO: Yes.

25 MR. FERRALL: Thank you.

1 MS. CANDIDO: The intent was so that he
2 didn't have to memorize the list.

3 MR. FERRALL: Fair enough.

4 Let's mark this as Exhibit 1356.

5 (Exhibit 1356 was marked for
6 identification and is attached hereto.)

7 BY MR. FERRALL:

8 Q We've marked as Exhibit 1356 a document
9 which is entitled "Plaintiff Cisco Systems
10 Supplemental Objections and Responses to Defendant
11 Arista Networks' Interrogatory No. 15," and it's
12 signed June 7, 2016. It has an Attachment A.
13 Exhibit A, I should say.

14 Mr. Palumbo, is this document, or at least
15 the Exhibit A to this document, the list of
16 customers that you were referring to?

17 A Yes, it was.

18 Q Okay. So can you explain how this list
19 was prepared?

20 MS. CANDIDO: I mean, Counsel, I sort of
21 need to instruct the witness to some degree because,
22 as he said, he's not representing that he prepared
23 this list.

24 So to the extent he has knowledge about
25 how counsel prepared this list, that is in some

1 respects privileged and work product. So in that
2 respect, I would instruct him not to reveal my work
3 product.

4 But he has information about how he
5 prepared with respect to how to answer the topic on
6 lost sales, if that's the issue.

7 MR. FERRALL: Sure. Let me try to focus
8 the question then.

9 Q I'm not interested in your conversations
10 with Ms. Candido or any counsel for Cisco or input
11 that they may have had in the preparation of this
12 list.

13 But I am interested in understanding from
14 you, if you can tell me, what was -- what were the
15 records, if you will, or the facts that Cisco had
16 and used in order to prepare this list?

17 Can you answer that?

18 MS. CANDIDO: And again, I would instruct,
19 to the extent that Cisco's counsel used records and
20 facts independent of your involvement to prepare
21 this exhibit, you should exclude that from your
22 answer.

23 But your preparation for today, to the
24 extent that that involved records of Cisco's, you
25 can answer in that respect.

1 THE WITNESS: This was prepared from some
2 of the sales tracking systems we have,
3 Salesforce.com, that we try to keep track of the
4 transactions that we win or lose.

5 BY MR. FERRALL:

6 Q Okay. Other than Salesforce.com -- and
7 let's just keep it at the source level -- were there
8 any other sources of information at Cisco that you
9 used -- when I say "you," I mean Cisco -- used to
10 prepare this list?

11 MS. CANDIDO: I would give the same
12 instruction. To the extent that counsel for Cisco
13 consulted other sources of information other than
14 Salesforce.com, that you should exclude that from
15 your answer to the extent you have knowledge of
16 that.

17 If you have other knowledge in terms of
18 preparing for today about the sources of information
19 used for -- to compile this list, you can answer
20 with respect to that.

21 THE WITNESS: I believe this came from
22 Salesforce.com or directly from our sales team,
23 information from there.

24 BY MR. FERRALL:

25 Q When you say directly from the sales team,

1 you mean via interviews or documents or -- what do
2 you mean by that?

3 A Via some vehicle from the sales team that
4 said, "Hey, we lost a transaction to Arista, and
5 here is the account."

6 I couldn't tell you, you know, where they
7 all the came from.

8 Q Okay. Do you know -- apart from
9 Salesforce.com, which we'll talk about, do you know
10 how many team members were consulted to gather the
11 information for this list?

12 A I really don't.

13 Q Any approximation? And what I mean by
14 that is, do you have any sense that there was a
15 broad outreach across the sales team to try to
16 gather this information as opposed to just speaking
17 to one or two people?

18 MS. CANDIDO: Again, I would instruct you
19 to exclude from your answer any attorney-client
20 communications or attorney work product.

21 THE WITNESS: I can't recall any broad
22 outreach.

23 BY MR. FERRALL:

24 Q All right. So what do you understand --
25 this list that's Exhibit A to 1356, what do you

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
a true record of the testimony given.

11 Further, that if the foregoing pertains to
12 the original transcript of a deposition in a Federal
13 Case, before completion of the proceedings, review
14 of the transcript [X] was [] was not requested.

15 I further certify I am neither financially
16 interested in the action nor a relative or employee
17 of any attorney or any party to this action.

18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.

20 Dated: 06/10/2016

21
22 
23

24 CARLA SOARES

25 CSR No. 5908

Errata Sheet

Case: *Cisco Systems, Inc. v. Arista Networks, Inc.*

Date of Deposition: June 7, 2016

Name of Witness: Frank Palumbo

[illegible]

Date: August 12, 2016

Signature: Frank Palumbo